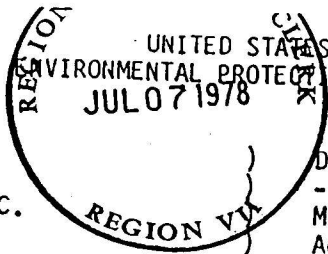


IN THE MATTER OF:

D. A. ROBINSON, INC.
Kirkwood, Missouri



ON AGENCY 78 JUL 10 A10: 39

DOCKET NO. I.F.&R. VII-294C

Marvin E. Jones
Administrative Law Judge
1735 Baltimore
Kansas City, Missouri 64108

INITIAL DECISION

By Complaint filed on March 10, 1978, Respondent is charged with violation of 7 U.S.C. Sections 136j(a)(2)(L) and 136e(c)(1)(A),(B), and (C), in that Respondent failed to submit to the Administrator (no later than February 1, 1978) information on the types and amounts of pesticides produced and distributed by Respondent, a registered establishment.

40 CFR 168.33 (Answer to the Complaint) provides, in pertinent part, that where Respondent contests any material facts alleged in Complaint to constitute a violation, it shall, within twenty days after service of the Complaint, file its answer which "shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which (it) has ... knowledge".

Section 168.33(d) provides as follows:

"Failure of respondent to plead specifically to any material factual allegation contained in the complaint shall constitute a binding decision of such 'allegation'."
(emphasis added)

Respondent's acknowledgement of the Complaint, signed by one Don A. Robinson, presumably its officer, was an unresponsive, immoderate and irrelevant letter stating, among other things, that its correct address was not that contained on its registration and addressed to D. J. Shiel, EPA Enforcement Attorney. It acknowledged the "late return of the Form OMB No. 158-R0109 mailed certified March 29, 1978" but otherwise did not plead specifically to, or make mention of, any other material allegation of the Complaint.

By letter dated April 13, 1978 Mr. Shiel advised Mr. Robinson that the letter of April 7, 1978 "does not satisfy the requirements of said Section 168.33", and of the provisions therein pertaining to Respondent's further failure to file its answer to the subject Complaint.

On April 27, 1978 said Robinson, on behalf of Respondent, mailed the following by certified mail, to the Hearing Clerk:

- "1. The whole thing for a non-productive report is a waste of tax money.
- "2. See No. 1.
- "3. See letter dated 4-7-78 to D J Shiel.
- "4. See you at the hearing."

On May 10, 1978 the undersigned advised the parties, by certified mail, that an Adjudicatory Hearing was set for June 30, 1978 in St. Louis, Missouri at a place to be later announced; directed them to advise by May 30, 1978 whether or not a settlement was feasible (Section 168.35(a)), and that, failing settlement, each party should (Section 168.36) on or before June 9, 1978 "furnish to the other party, to the Regional Hearing Clerk, and to me the names of all persons ... to testify at said Hearing" (along with a narrative summary of testimony and a description of exhibits, Section 168.36(b) and (e)).

Respondent was further directed to furnish information concerning the size of its business and its gross sales in a representative 12-month period, and whether the proposed \$288.00 penalty "will affect its ability to continue in business."

EPA responded to said request for said prehearing data but Respondent did not respond in any particular, though said request was received and receipted for by Respondent on May 15, 1978.

On June 23, 1978 Complainant filed its Motion for a Default Order under the provisions of 40 CFR Section 168.34(a) and pursuant to Section 168.34(b)(2).

Said Section 168.34(a) provides, in pertinent part, as follows:

"168.34. Failure to answer the complaint: Default Order

"(a) Default. Respondent may be found in default upon his ... (2) failure to comply with prehearing ... order ... of ... the Administrative Law Judge ... Default of respondent shall constitute an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. The penalty proposed to be assessed in the complaint shall become due and payable by respondent without further proceedings upon the issuance by the Regional Administrator of a final order issued upon default."

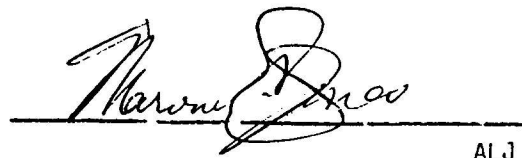
On June 26, 1978 the undersigned continued the date for the Adjudicatory Hearing to afford Respondent the opportunity (until July 6) to respond to the Motion. On July 1, 1978 Respondent acknowledged the Motion but did not specifically respond thereto, choosing instead to direct scurrilous remarks at Complainant's Counsel and the agency.

The above comprises my Findings of Fact herein and I conclude that as a matter of law Respondent has admitted the violation charged and is subject to the Default Order, proposed hereinbelow pursuant to said Section 168.34.

"PROPOSED DEFAULT ORDER

Pursuant to 40 CFR 168.34, a civil penalty in the sum of \$288.00 is hereby assessed against Respondent D. A. Robinson, Inc., by reason of its default by failure to comply with the prehearing order of the Administrative Law Judge issued in accordance with 40 CFR 168.36(b), and said Respondent is ordered to pay same by Cashier's or Certified Check, payable to the United States Treasury immediately on receipt of this order."

This Initial Decision is signed and filed this 7th day of July 1978, at Kansas City, Missouri.


ALJ